

Application No. 10/765,468  
Amendment dated September 11, 2006  
Reply to Office Action of March 13, 2006

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**Remarks / Arguments**

Applicants thank the Examiner for the Office Action of March 13, 2006. This Amendment is in full response thereto.

In the Office Action, the Examiner indicated that claims 32-48 are pending. However, Applicants kindly point out that claims 29-31 have not been canceled and are thus pending.

In the Office Action, the Examiner objected to the form of claim 32. Applicants have amended claim 32 to include the preamble indentations requested by the Examiner.

The Examiner also objected to the Drawings and Specification with regard to the phrase, "fiber receiving conduit" in the claims. Applicants have amended the claims to recite a hollow central tube, as described by the Specification in the paragraph bridging pages five and six, and as depicted by Figures 1-2.

The Examiner also rejected claims 32, 39, 42, and 48 as indefinite under 35 U.S.C. 112, second paragraph.

With regard to line 12 of claim 32, Applicants have amended the claim to indicate that the adjustable seals partition the internal passage into a first chamber, a second chamber and a primary cooling chamber.

With regard to the first and second inlet ports having no antecedent basis, Applicants have amended the claims to provide such support.

With regard to manipulated seals, Applicants have amended the claims to indicate that at least one of the seals is manipulated and that at least one of the seals is independently manipulated by the controller. In other words, one or more of the seals is manipulated. When more than one seal is manipulated, each seal is manipulated independently from the others.

With regard to "cooling", Applicants have amended the claims to indicate that the flow of the first and second fluid mediums achieves a lowering of the fiber temperature.

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With respect to the extraction limitation of claims 42 and 48, Applicants have amended the claims to indicate that a fluid sample is allowed to flow from at least one of the first, second and primary cooling chambers to the gas analyzer.

With regard to claim 39, Applicants have amended the claim to indicate that there is a plurality of the type of heat exchanger of claim 32 and that a third, fourth or fifth heat exchanger is not necessarily required, but may be present.

With regard to claim 40, Applicants have amended the claim to positively recite that the third and fourth seals are manipulated. The amendments to claim 40 also make it more clear as to which orifices are being adjusted.

With regard to claims 41 and 44 & 48, Applicants have amended the claim to positively recite a step of selecting a flow rate and a threshold value, respectively.

With regard to alternative expressions in the claims, Applicants have amended claims 30 and 35-38.

In view of the claim amendments, the rejection should be withdrawn.

The Examiner also rejected claims 32-35 and 37-46 under 35 U.S.C. 103(a) as unpatentable over Lu et al. (U.S. Patent No. 6,789,400). Applicants respectfully traverse the rejection because Lu et al. fails to disclose, teach, or suggest all of the claim limitations and the Examiner has not pointed to some teaching in the prior art or to some legal precedent supplying the missing limitations along with an suggestion to modify the process of Lu et al. as proposed by the Examiner.

Each of claims 29-45 requires a step of "manipulating at least one of the adjustable seals, via the controller, to selectively adjust a dimension of the seal orifice". Applicants respectfully assert that one of ordinary skill in the art at the time the invention was made would have understood the word, "manipulating", to mean "moving, arranging, operating, or controlling by the hands or by mechanical means". Applicants further assert that such a one would have understood the word, "via", to mean "by means of". Thus, such a one would have understood the meaning of the combination of the phrases, "manipulating", "via", and "selectively adjust a dimension of the seal orifice", to mean:

- the adjustable seals are mechanically moved, arranged or operated

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- the controller does the mechanical moving, arranging or operating
- mechanical moving, arranging or operation results in adjustment of the dimension of the seal orifice.

Evidence that such a one would have understood the above-recited definitions as the meaning of the above-recited claim language of claims 29-45 may be found in the Evidence Appendix attached hereto. The Evidence Appendix includes printouts from the web site, web.archive.org, displaying the definitions of "manipulating" at the time the invention was made. Therefore, not only is a dimension of the orifice of the adjustable seal adjusted, the adjustable seal is also manipulated.

On the other hand, Lu discloses that, in the cap assembly (1) (which the Examiner seems to consider reads upon the claimed adjustable seal), each of the chambers (40 and 41) and the size of the openings of the partitions (34, 38, and 37) **can** be tailored according to the geometry and operation conditions of the cooling device. Applicants respectfully assert that one of ordinary skill in the art at the time the invention was made would have understood the word, "tailored", to mean "to make, alter, or adapt for a particular end or purpose". Evidence that such a one would have adopted this meaning may be found in the Evidence Appendix attached hereto.

Such a meaning of "tailored" has a different scope than that of "manipulating" as discussed above, and as such, is not interchangeable with "manipulating". More particularly, Applicants submit that one of ordinary skill in the art would have understood "tailored" as actually removing or adding material to the partitions in order to adjust the size of the openings of the partitions (34, 38, and 37). In contrast, manipulation (i.e., mechanical adjustment) is patentably distinct from such tailoring. In summary, a disclosure of "tailored" is not synonymous with, overlapping with, or generic to, a claim limitation of "manipulating".

Even if the Examiner disagrees with Applicants' argument on this point, they respectfully assert that Lu is not enabling as to the means for accomplishing "manipulation" of the cap assembly 1. In order for a reference to be legally

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sufficient prior art in an obviousness rejection, it must be enabling as to the disclosure, suggestion, or teaching that the Examiner seeks to use.

Additionally, in view of the Examiner's comments, it appears to Applicants that the Examiner seems to be taking the position that the tailoring of the partition openings (34, 38, and 37) is a disclosure of the claimed limitations of 1) manipulating an adjustable seal and 2) accomplishing an adjustment of a dimension of an orifice. Applicants respectfully assert that Lu does not actually disclose each of these two separate limitations. Rather, Lu discloses that the partition openings (34, 38, 37) may be tailored without specifying how such chambers and partition openings can be tailored, much less disclosing how such chambers and partition openings can be tailored by manipulating the cap assembly (1).

In the Office Action, the Examiner also takes the position that it is obvious to "tailor" or "adjust" automatically based upon *In re Venner*, 262 F.2d 91, 95, USPQ 193, 194 (CCPA 1958). However, the method claims do not merely recite automatically adjusting, they recite "manipulating at least one of the adjustable seals, via the controller, to selectively adjust a dimension of the seal orifice". One of the holdings of *In re Venner* is that it is not patentable to provide automatic or mechanical means to replace manual activity which has accomplished the same result. Application of this particular holding of may be distinguished from the rejection at issue here because Lu (as described above) fails to disclose manually moving, arranging or operating the cap assembly (1) to accomplish selective adjustment of the partition openings (34, 38, 37). Additionally, as discussed above, Lu does not provide an enabling description as to mechanical adjustment of the cap assembly 1 such that a dimension of the partition openings (34, 37, 38) are adjusted.

Thus, the rejection of claims 29-49 under 35 USC 103(a) should be withdrawn.

With particular regard to claims 29-43 and 45-47, Lu fails to disclose, teach, or suggest an iris diaphragm including a series of sliding plates that combine to form a generally circular orifice and which are selectively manipulable to increase

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and/or decrease a diameter of the orifice. As such, the rejection of the these claims should be withdrawn on this basis alone.

With particular regard to claims 44 and 48, Lu fails to disclose, teach, or suggest the claimed step of manipulating (based upon the measured concentration and the threshold value) at least one of the adjustable seals, via the controller, to selectively adjust a dimension of the associated seal orifice when the measured concentration of one of the gases in the fluid sample exceeds the threshold value. Applicants kindly note that, in amended claims 44 and 48, an explicit step of manipulating is now required. This step claimed by claims 44 and 48 accomplishes the goal of maintaining the concentration of the gas being measured to a value below the threshold value.

Lu teaches away from this claimed step because it accomplishes the same goal by a different route. Applicants point out that, in Figure 2 and at lines 42-51 of column 4, Lu discloses that the speed control mechanism of pump 29 is connected to line 22 via line impurity sensing loop 26 which is provided with a gaseous impurity sensor 27, wherein line 22 can lead to a gas purification system. While not explicitly disclosed, Applicants respectfully submit that one of ordinary skill in the art would have found it implicit that Lu discloses that, based upon the impurity level sensed by sensor 27, the speed of the pump 29 leading to the gas purification unit via line 22 is either increased when the impurity level is at a relatively higher level or decreased when the impurity level is at a relatively lower level. Therefore, one of ordinary skill in the art would not have been motivated to utilize the method recited by claims 44 and 48 in the Lu process because Lu has already adequately disclosed a solution to the problem with which the method recited by claims 44 was concerned.

With particular regard to claim 33, in order to more clearly claim an aspect of the invention, Applicants have amended the claim to indicate that wherein a composition of the first fluid medium is the same as the second fluid medium.

With particular regard to claim 34, in order to more clearly claim an aspect of the invention, Applicants have amended the claim to indicate that wherein a

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composition of the first fluid medium is different from the second fluid medium. As such, Applicants respectfully submit that the Examiner's Official Notice is not applicable.

The Examiner also rejected claim 38 under 35 U.S.C. 103(a) as unpatentable over Lu et al. in view of U.S. Patent No. 4,792,347 (Deneka). Applicants respectfully traverse the rejection because Lu fails to disclose, teach or suggest all of the limitations of the claims as discussed above and Deneka fails to cure that deficiency.

In view of the arguments above, Applicants respectfully request allowance of the application.

Should the examiner believe a telephone call would expedite the prosecution of the application, he is invited to call the undersigned attorney at the number listed below. Applicants have contemporaneously submitted a Petition for a Three Month Extension of Time along with a Fee Transmittal for the associated fee as well as for additional new independent claim 49. Otherwise, it is not believed that any fee is due at this time. If that belief is incorrect, please debit deposit account number 01-1375. Also, the Commissioner is authorized to credit any overpayment to deposit account number 01-1375.

Respectfully submitted,



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Christopher J. Cronin

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**Evidence Appendix**

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4. **Medicine.** To handle and move in an examination or for therapeutic purposes: *manipulate a joint; manipulate the position of a fetus during delivery.*

**Back formation from manipulation.]**

manip

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*adj.*

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- ultry (P-FMG ALT="SRC="http://cache.lexico.com/dictionary/images/AHD4/GIF/prime.gif" height="22" width="3" ALIGN="BOTTOM">>); trie) adj.

Synonyms: *manipulate, exploit, maneuver*  
These verbs mean to influence, manage, use, or control to one's advantage by artful or indirect means:  
*manipulated me into helping him; exploited natural resources; maneuvered me out of one job;*  
and *into another. See also synonyms at handle*

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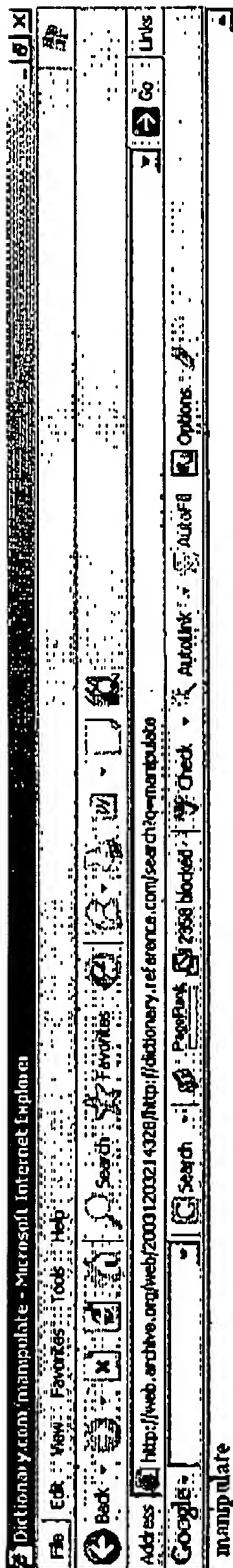
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**manipulate**

**manipulate** *verb* **v. t** [imp. & p. p. manipulated; p. pr. & vb. n. manipulationmanipulatus, p. p. of manipulare to lead by the hand, fr. L. manus. See Manus.] 1. To treat, work, or operate with the hands, especially when knowledge and dexterity are required; to manage in hand work; to handle; as, to manipulate scientific apparatus.

2. To control the action of, by management, as, to manipulate a convention of delegates; to manipulate the stock market; also, to manage artfully or fraudulently, as, to manipulate accounts, or election returns.

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**manipulate**

**manipulate** *verb* **v. i** To use the hands in dexterous operations; to do hand work, specifically, to manage the apparatus or instruments used in scientific work, or in artistic or mechanical processes; also, specifically, to use the



**Use** *tip u'late\, v. i.* To use the hands in dexterous operations; to do hand work; specifically, to manage the apparatus or instruments used in scientific work, or in artistic or mechanical processes; also, specifically, to use the hand in mesmeric operations.

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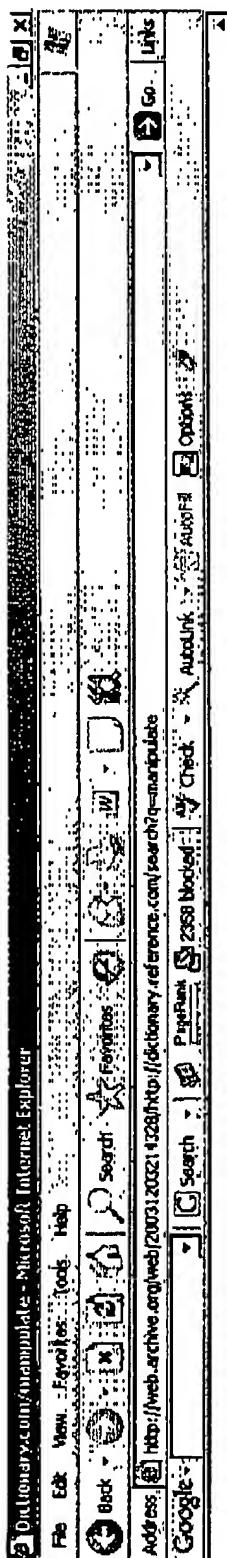
v 1: influence or control shrewdly or deviously. "He manipulated public opinion in his favor." 2: hold something in one's hands and move it 3: fake or falsify. **Fudge the figures**; "cook the books"; falsify the data" [syn: fudge, fake, falsify, cook, ~~wrangle, misrepresent~~] 4: manipulate in a fraudulent manner, of prices [syn: rig] 5: influence skilfully to one's advantage. "She manipulates her boss." "She is a very controlling mother and doesn't let her children grow up" [syn: control] 6: in physiotherapy [syn: treat manually]

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manipulate

q 1: influence or control shrewdly or deviously: "He manipulated public opinion in his favor." 2: hold something in one's hands and move it 3: fake or falsify: "Fudge the figures", "cooked the books", "falsify the data" [syn: fudge, fake, falsify, cook, wangle, misrepresent] 4: manipulate in a fraudulent manner, of prices [syn: rig] 5: influence skilfully to one's advantage: "She manipulates her boss"; "She is a very controlling mother and doesn't let her children grow up" [syn: control] 6: in physiotherapy [syn: treat manually]

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**tailor**  **Pronunciation Key** (tā'lä'är)

n.

One that makes, repairs, and alters garments such as suits, coats, and dresses.

v. **tailored** tailoring, tailors

v. *dr.*

1. To make (a garment), especially to specific requirements or measurements.  
2. To fit or provide (a person) with clothes made to that person's measurements.  
3. To make, alter, or adapt for a particular end or purpose: *a speech that was tailored to an audience of business leaders.*

To pursue the trade of a tailor.

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tailored

adj 1: severely simple in line or design; "a neat tailored suit"; "tailored curtains" [syn: bespoke, bespoken, custom, made-to-order, tailor-made]

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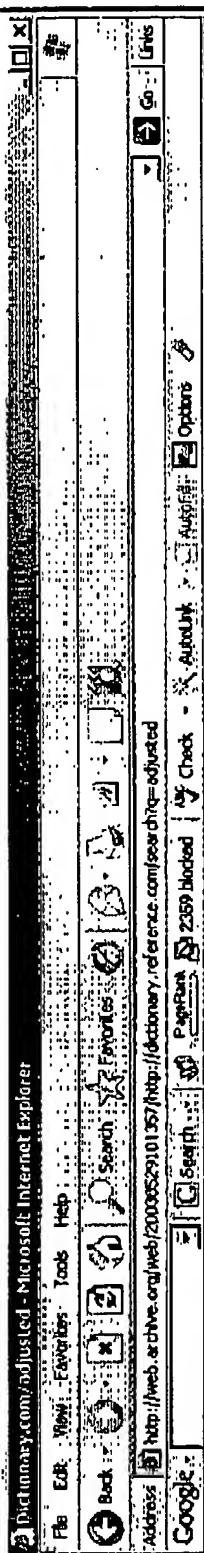
adjusted  **Pronunciation Key** (ə-jist')  
 v. **adjusted**, **adjusting**, **adjusts**  
 v. tr.

1. To change so as to match or fit, cause to correspond.
2. To bring into proper relationship.
3. To adapt or conform, as to new conditions: "unable to adjust themselves to their environment" (Karl A. Menninger). See Synonyms at **adapt**.
4. To bring the components of into a more effective or efficient calibration or state: *adjust the timing of a car's engine*.
5. In chiropractic, to manipulate (the spine and other body structures) to treat disorders and restore normal function of the nervous system.
6. To decide how much is to be paid on (an insurance claim).

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Syn: To adapt, suit; arrange; regulate; accommodate; set right; rectify, settle.

Source: *Merriam-Webster's Revised Unabridged Dictionary*, © 1996, 1999 MCGraw-Hill, Inc.

adjusted

adj 1: altered to accommodate to certain requirements or bring into a proper relation; "an adjusted insurance claim"; "the car runs more smoothly with the timing adjusted" [ant: unadjusted] 2: (psychology) adjusted to demands of daily living; showing emotional stability [ant: maladjusted] 3: having achieved a comfortable relationship with your environment [syn: familiarized] 4: (especially of garments) having the fit or style adjusted; "For my wedding I had my mother's wedding dress altered to fit me"

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